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ORIGINAL No. 5.

IN THE SUPREME COURT OF THE UNITED STATES.

No. 1 Orig
O. T. 1907

THE STATE OF GEORGIA,
By its Attorney-General, John C. Hart, Plaintiff,

vs.

THE TENNESSEE COPPER COMPANY AND THE DUCKTOWN SULPHUR, COPPER & IRON COMPANY, Ltd.,
Defendants.

IN EQUITY.

Answer of The Ducktown Sulphur, Copper and Iron Company, Limited.

JAS. G. PARKS,
Attorney and Counsellor

GAUT-OGDEN CO., KNOXVILLE, TENN.

ORIGINAL No. 5.

In The Supreme Court of The United States.

THE STATE OF GEORGIA, By Its Attorney-General, John C. Hart, Plaintiff,

vs.

THE TENNESSEE COPPER COMPANY AND THE DUCKTOWN SULPHUR, COPPER & IRON COMPANY, Ltd., Defendants.

IN EQUITY.

THE SEPARATE ANSWER OF THE DUCKTOWN SULPHUR, COPPER & IRON COMPANY, LIMITED, ONE OF THE DEFENDANTS IN THE ABOVE STYLED CAUSE.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States, Sitting in Equity:

The defendant Ducktown Sulphur, Copper & Iron Company, Limited, now and at all times hereafter saving to itself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the

original bill of complaint filed in the above entitled cause, and also reserving unto and craving for itself the full benefit and advantage of all questions made in and by its demurrer heretofore filed, which may properly inure to it under the action of this Honorable Court thereon, for answer to said bill of complaint, or to so much thereof as this defendant is advised it is material or necessary for it to answer, answering, says:

First.

It is true, as charged, that this defendant is a corporation duly organized under the laws of Great Britain for the objects and purposes mentioned in said bill, and that, having complied with the laws of Tennessee pertaining to foreign corporations, this defendant is authorized to carry on its corporate business in said state; but its main office is in the city of London, not in Polk county, Tennessee, as charged.

Second.

It is denied, both as a matter of law and of fact, that the plaintiff is both the original and ultimate proprietor of the lands within its territorial jurisdiction, but this defendant is advised and charges that even if by operation of law the plaintiff should be held to be the ultimate proprietor of such lands, its interests therein would be of remote and contingent nature, dependent upon bare possibilities that may never happen, and not being such present or prospective direct property right therein as would entitle the plaintiff to maintain an action for alleged injury thereto. It is also denied that the plaintiff is the owner in fee, or has a direct property right in the local public highways that are laid out and maintained by sev-

eral counties through which they run. While it may be true that the plaintiff has general supervision by law over such highways, they are not laid out and kept up by the state, and it has no such direct property interest therein as entitles it to maintain an action for alleged injury thereto.

Third.

As to the averments in paragraph three of said bill, this defendant is advised that they cover only matters of law and not matters of fact to be answered.

Fourth.

It is true, as charged in paragraph four of said bill, that at the time this action was brought, and for some time prior thereto, this defendant had been engaged in the mining and partial smelting of copper ores in Polk county, Tennessee, but not in the manufacture of sulphur or other products. It is denied that at the time of the filing of said bill this respondent and its co-defendant were engaged in "roasting" said copper ores. It is true that at the time of, and before the filing of said bill the defendants were engaged in mining and smelting said ores and that a number of furnaces are and have been used in carrying on said smelting operations, but it is denied that it was well-known that before said appliances were installed the use thereof would result in both a public and private nuisance, and result in irreparable injury to the plaintiff and its citizens, as alleged in the fourth paragraph of said bill.

This defendant began its operations in the year 1891. Prior to that time, and for a considerable period thereafter, no way or method had ever been found whereby

ores of the Ducktown variety could be successfully treated other than by what is technically known as open-heap roasting. This roasting was preliminary to the smelting of the ores in ordinary water-jacketed furnaces. It had always been found necessary to eliminate by said roasting the larger part of the sulphur contents of the ores. An excess of sulphur would result in "chilling" the furnaces, and in their consequent stoppage. The roasting was done in large heaps in the open air, it having been found impossible to successfully roast the ores in stalls, kilns, or in any other way whereby the fumes could be collected and precipitated or condensed. This method was the one used by the various copper companies from the time of the discovery of copper at Ducktown about the year 1850, until the suspension of operations about the year 1879, from which latter date until 1891 the mines were idle. For a period of about two years after this defendant came into the field various and costly experiments were carried on with the hope of finding some way by which the iron and sulphur contents of the ores could be saved and utilized instead of being wasted. Practically every other known method of treating copper ores was tried, but without success. These tests and experiments were made under the advice and direction of eminent experts and finally, about the year 1893, it was upon their advice that the old method of open-heap roasting was resorted to as the only one by which the ores could be successfully treated.

For a period of about nine years, from 1893 until 1902, the roast-plant of this defendant was located at a point locally known as Cartertown, which is about two miles from the Georgia state line. About four years ago this

defendant's general manager succeeded in perfecting a process by which the ores are successfully treated without preliminary roasting. The green, unroasted ores are smelted in ordinary water-jacketed furnaces, such as had theretofore been used in smelting the roasted ores. Since the discovery and installation of said process all of this defendant's reduction operations have been carried on at its smelting-plant at Isabella, which is further removed from the Georgia state line than was its said roast-plant, being three miles or further therefrom.

This defendant's operations are, and heretofore have been confined exclusively to the production of a matte containing approximately fifty per cent of copper, and in this form its product is marketed. It has never produced refined copper, or any other product than that mentioned.

Fifth.

The allegations in the fifth paragraph of said bill are denied. While it is true that in carrying on said smelting operations sulphurous fumes and gases are generated and thrown off into the atmosphere to some extent, and while it is true that said fumes are to some extent injurious to vegetation in the immediate vicinity of the works, it is denied that they are discharged in vast quantities over the territory of the plaintiff, and that they are noxious and poisonous, rendering the atmosphere dense, impure, unpleasant and unwholesome, thereby causing both a public and a private nuisance. While it may be true that now and then some of said fumes are carried by the air currents over into the territory of the plaintiff, it is denied that those arising from the operations of this

defendant are sufficient either in quantity or quality to cause or create a nuisance in the state of Georgia, as charged. While there was complaint on the part of a few citizens of that state during the nine years that open-heap roasting was practiced by this defendant, there has been none since it began carrying on its entire reduction operations at its smelting-plant, three miles or further from the territory of the plaintiff.

Sixth.

The allegations in paragraph six of said bill are denied.

Seventh.

It is denied that, as charged in paragraph seven of the bill, said fumes have destroyed over a considerable portion of the counties named all vegetables, crops, grasses, orchards, fruit trees, forests, and other vegetation and timber, to the value of hundreds of thousands of dollars, and that the zone of destruction is growing with each month of operation of said works, to the irreparable injury of the plaintiff, its lands, highways and income.

Eighth.

The allegations in paragraph eight of said bill are denied. It is not true that timber and vegetation in said State have been destroyed by said fumes to the extent of in any way interfering with the accumulation of moisture necessary for plant life, and to supply mountain springs, reservoirs and streams, and that the rainfall runs off as rapidly as it is discharged upon the soil.

Ninth.

The allegations in paragraph nine of the bill are de-

nied. It is denied that within the territory of the plaintiff timber and vegetation have been destroyed by said fumes to the extent of preventing the natural absorption of moisture, rain and water discharged upon the soil, and that as a result floods and freshets are caused, washing away the top or fertile soil and leaving only a subsoil of rocks, quartz, etc., which will cause the territory of the plaintiff to become a barren waste, subject to sudden and severe floods and freshets, etc.

Tenth.

The allegations in paragraph ten of said bill are denied. It is denied that there is any washing of the soil that is in any way attributable to the action of said fumes.

Eleventh.

It is denied, as alleged in paragraph eleven of said bill, that said fumes have caused destruction of timber, vegetation, etc., within the territory of the plaintiff, and that as a result thereof its public highways have been injured and impaired. It is also denied that said fumes are of such quantity or quality as to render the use of said highways unhealthful, uncomfortable, unpleasant, undesirable, or unsatisfactory.

Twelfth.

It is denied, as alleged in paragraph twelve of said bill, that the value of the lands in the counties of Murray, Gilmer, Fannin, Union and Towns, has been impaired or lessened by reason of the alleged injury from said fumes.

Thirteenth.

It is denied, as alleged in paragraph thirteen of said

bill, that the taxable value of the lands in the counties named, and the plaintiff's revenues therefrom, have been decreased or lessened by reason of the alleged injury from said fumes, or that such will result in the future from said operations.

Fourteenth.

The allegations in paragraph fourteen of said bill are denied. It is not true that said fumes and gases are poisonous; that they render the atmosphere over and upon the territory of plaintiff noisome, foul, unwholesome and difficult to breathe, and that the health of the citizens of that territory has been and will be seriously impaired, their vitality lessened and their susceptibility to disease increased. On the contrary, they are harmless, and in many morbid conditions are regarded as positively beneficial.

It is also denied that said fumes cause the destruction of crops, grasses, orchards, trees and forests, the alleged injury to and washing of the soil, and that thereby the citizens of said territory have been deprived of their means of livelihood, or that they have been deprived of pure air, sunlight, or the peaceable enjoyment of their homes and property. On the contrary, it is averred that said fumes are no more unpleasant than those of ordinary manufacturing towns, and not as much so as in some places.

Fifteenth.

This defendant has no knowledge of the matters set forth in paragraph fifteen of said bill. If they are, or should in any way become material, it prays that legal proof thereof may be required.

Sixteenth.

This respondent has no knowledge of the matters set forth in paragraph sixteen of said bill. If they are, or should in any way become material, it prays that legal proof thereof may be required.

Seventeenth.

This respondent has no knowledge of the matters set forth in paragraph seventeen of said bill. If they are, or should in any way become material, it prays that legal proof thereof be required.

Eighteenth.

Respondent knows nothing of the matters set forth in paragraph eighteen of said bill, except that suit was filed as therein stated.

Nineteenth.

It is denied, as charged in paragraph nineteen of said bill, that it was shortly after complaint was made to the legislature of Georgia that this defendant abandoned open-heap roasting. As will appear from paragraph fifteen, the resolution of said legislature was enacted and approved in August, 1903, while this defendant had abandoned open-heap roasting in August, 1902, a year before.

It is true that an agreement was proffered by the state of Georgia to dismiss its then pending suit, and that it was accepted by this defendant. A copy of said agreement is made exhibit "E" to the bill, to which reference is made for its terms.

Twentieth.

It is not true, as charged in paragraph twenty of said

bill, that this defendant, in adopting said new method or process, erected or has since maintained any new furnaces, kilns, or other appliances. Nor is it true as to this defendant that as a part of the appliances used with said new method it has erected and is using tall stacks or chimneys, whereby, it is alleged, the fumes are thrown off at a much greater elevation and thereby diffused and extended over a much larger area than when open-heap roasting was practiced. On the contrary, this defendant is and has been using only the ordinary furnaces with common tubular iron smoke-stacks about sixty feet high, the same as were used in smelting the roasted ores. In addition to this, its smelting-plant is located in a hollow or ravine below the mean level of the region, and somewhat below the level of its old roast-plant, and it is practically surrounded by near-by hills and ridges that are much higher than the furnace stacks.

It is denied that the fumes coming from the use of said new process are more powerful than those from open-heap roasting, or that they have increased the alleged injury, or extended the area affected thereby.

Twenty-first.

The allegations in paragraph twenty-two of said bill, in so far as they relate to this defendant, are denied. It is not true that the capacity of its furnaces has been increased, as charged.

Twenty-second.

This respondent has no knowledge of the matters set out in paragraph twenty-three of said bill. If they are, or should become material, it prays that legal proof thereof be required.

Twenty-third.

This respondent has no knowledge of the matters set out in paragraph twenty-four of said bill. If they are, or should in any manner become material, if prays that legal proof thereof be required.

Twenty-fourth.

This respondent has no knowledge of the matters set out in paragraph twenty-five of said bill. If they are, or should in any manner become material, it prays that legal proof thereof be required.

Twenty-fifth.

This respondent has no knowledge of the matters set out in paragraph twenty-six of said bill. If they are, or should in any manner become material, it prays that legal proof thereof be required.

This respondent shows, however, that in the report of the commission appointed in pursuance of the resolution of said legislature for the purpose of making an examination of conditions in and around Ducktown, and upon which report the order of suit by the Governor was based, no complaint was made of injury from the operations of this defendant, its name not even being mentioned. It is true that in a former suit filed in 1903 it was made a party defendant, but this was after complaint had been made on the part of a few citizens of Georgia of alleged injury from fumes arising from open-heap roasting, as hereinbefore shown.

Twenty-sixth.

And now this respondent craves leave to show unto this Honorable Court that said copper mines and works

are located in a remote mountainous region, not fitted by nature for ordinary agricultural uses. This region is about 1800 feet above sea-level and is almost entirely surrounded by high mountains, some of which reach an altitude of 4,300 feet, forming what is locally called the "Great Copper Basin." This basin embraces approximately one hundred square miles and is itself traversed and bisected by high hills and ridges, many of which might not improperly be classed as mountains themselves. The soil is thin, rocky, and of the poorest quality. There is little or no cultivable land, except small areas lying in strips along the streams. There have never been but few farms in the whole region that were capable of producing enough to carry their owners from one season to another. The timber interests amount to little or nothing. The original forests were only such as a region of thin soil would naturally produce; but even the greater part of this for a distance of from eight to ten miles from the mines was cut off for cord-wood and charcoal for use in smelting operations prior to the year 1879.

The mining interests of the region are vastly paramount to all others combined. This is not only true as to the mining district, but as to the entire county. It is shown that the defendants themselves pay taxes upon a very much larger assessment than that of the whole county before the resumption of mining operations in 1891.

Before the discovery of copper the region was a wilderness, inhabited by few people. After the opening of the mines a thrifty and populous community grew up, dependent almost altogether upon the one industry. When in 1879, from various causes, operations were suspended,

almost the entire population was forced to move elsewhere to obtain work for a living. In 1890, before this respondent caused operations to be resumed, it is said that the official census shows the population of Ducktown to have been but 202. During the years since this respondent and its co-defendant caused the re-opening of the mines, a large population has again come into the district, amounting, according to conservative estimates, from 10,000 to 12,000, practically all being directly dependent upon the working of the mines. In addition to this, the defendants and the people who have come into the district have laid out and invested millions of dollars, practically all of which would be a dead loss but for the working of the mines.

Said region is not only better suited in every way by nature for the carrying on of the operations complained of than any other known accessible district in that part of the country, but the copper ores being worked are of such low grade as to make it commercially impossible to ship them any considerable distance for treatment, even if a more suitable district existed.

As hereinbefore shown to this Honorable Court, this respondent and its co-defendant, during the period covering their operations, have used in the treatment of their ores the only two methods or processes known to metallurgy by which such ores can be successfully treated. Their said operations are being carried on at the place where the ores are found and which is well-adapfed by nature for the business, and respondent is advised that it has the right to put its said mining property to the use manifestly intended by nature, and to do so by such methods and processes alone as are available under the

highest standard of the art, being responsible only in damages for such injury, if any, as may result from such natural use.

Twenty-seventh.

This respondent craves leave further to show to the Honorable Court that the plaintiff has been guilty of such laches in and about the matters set forth in the bill of complaint as in equity should bar the relief sought.

In addition to the long period during which roasting and smelting operations were carried on at Ducktown by this respondent's predecessors, it is shown that this respondent, in the exercise of what it believed to be its rights, laid out and expended large sums of money in erecting, installing and maintaining its said roast-plant. During a period of about nine years, to-wit: from 1893 to 1902, it constantly carried on its roasting operations at said plant without any complaint on the part of the plaintiff of any injury therefrom. As hereinbefore shown, in August, 1902, this respondent abandoned said roasting process and adopted said new method, the fumes from which latter, as hereinbefore shown, are no greater in volume and no more injurious than those arising from the old method. In making said change all of this respondent's reduction operations were removed fifty per cent. further away from the territory of the plaintiff, and inasmuch as the plaintiff had made no complaint during the nine years said roasting operations were being carried on, this respondent believed that no injury would or could result to plaintiff from operations thus further removed from its territory. And after said new method had been in use by respondent for a period of about eigh-

teen months, to-wit: from August, 1902, until March, 1904, during which time the plaintiff had opportunity to observe its results, it was largely at the insistence of the plaintiff that the defendant Tennessee Copper Company also abandoned said open-heap roasting and adopted said new method or process, and erected a tall chimney or stack and other appliances, involving a large outlay of money.

It is further shown that the injuries, if any, resulting from the operations of the defendants are trifling in amount as compared with the vast importance to the public of the working of said mines, and to the copper industry of the world of the questions involved.

Twenty-eight.

And now this defendant denies that there is any other matter, cause, or thing in the said plaintiff's bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge and belief of this defendant; and all which matters and things this defendant is ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

DUCKTOWN SULPHUR, COPPER & IRON CO., *Limited.*
JAS. G. PARKS,
Attorney and Counsellor. [L. S.]

State of Tennessee, }
Polk County. }

On this the 12th day of November, 1906, before me personally appeared Charles W. Renwick, who made solemn oath that he is the Assistant General Manager of the Ducktown Sulphur, Copper & Iron Company, Limited, the defendant above-named; that he is the highest officer of said company in charge of its local office in said county at this time, and as such has custody of the corporate seal and has caused the same to be hereunto affixed in attestation of the truth of this its answer to the bill of complaint filed in this cause.

CHARLES W. RENWICK,
Ass't General Manager.

Sworn to and subscribed before
me, this Nov. 12th, 1906.

G. G. HYATT,
Notary Public.

In the Supreme Court of the United States

October Term, 1906

THE STATE OF GEORGIA, BY ITS ATTORNEY-GENERAL, JOHN C. HART,
Plaintiff,

vs.

THE TENNESSEE COPPER COMPANY AND THE DUCKTOWN SULPHUR, COPPER AND IRON COMPANY (LIMITED),
Defendants.

} In Equity.

REPLICATION OF THE COMPLAINANT, THE STATE OF GEORGIA, TO THE ANSWER OF THE DEFENDANT, THE DUCKTOWN SULPHUR, COPPER AND IRON COMPANY (LIMITED).

This replicant, the State of Georgia, by its Attorney-General, John C. Hart, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, The Ducktown Sulphur, Copper and Iron Company (Limited), for replication thereto sayeth that replicant doth and will aver, maintain and prove his said bill to be true, certain and sufficient in the law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive and insufficient in law to be replied to by this replicant; without that, that any other matter or thing in the said answer contained, material or

effectual in the law to be replied unto, confessed or avoid
traversed or denied, is true; all of which matters and thi
this replicant is ready to aver, maintain and prove as
Honorable Court shall direct, and humbly prays as in and
its said bill it hath already prayed.

JOHN C. HART,
Attorney-General of Georgia

LIGON JOHNSON,
Solicitor for Complainant